



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MARCH 08, 2023

IN THE MATTER OF:

Appeal Board No. 627071

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed December 2, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a distribution center for an auto parts company, as a warehouse associate from November 23, 2021 until July 10, 2022, first as a full-time employee and then later as a part-time employee. She worked Sunday through Wednesday from 7:00 pm to 3:30 am. The employer's policy provides that an employee who fails to report to work for two consecutive workdays without contacting his/her immediate supervisor or the Human Resource Department will be considering as having

voluntarily resigned. The claimant was aware of the employer's policy.

The claimant saw a physician and was given a note allowing her to return to work on July 8, 2022. The claimant did not tell her supervisor that she was going to be absent on July 11, 12, and 13 and she was not removed from the schedule by her supervisor. Her supervisor did not have authority to grant time off or remove her from the schedule. The claimant was absent from work on July 11, July 12, and July 13, 2022 and she did not call to notify the employer that she would be absent from work on those days. On July 13, 2022, the claimant's employment ended because she failed to report to work on two consecutive workdays and failed to contact the employer on those days to notify the employer of her absence.

OPINION: The credible evidence establishes that the employer discharged the claimant because she failed to report to work or notify the employer of her absence on two consecutive workdays. As the claimant was aware that violating the absence and notification policy would end her employment, no warning is needed to establish misconduct. Here, the claimant was admittedly aware of the policy and was absent on July 11, July 12, and July 13, 2022. She also admitted that she did not call the employer to inform the employer that she was going to be absent. The claimant contended that she had already advised the second shift supervisor that she had to take a particular medication for 10 days and, as the medication would impair the claimant's driving, affect her coordination, and make her drowsy, she would not be reporting to work on July 11, July 12, and July 13, at which point the supervisor took her off the schedule. However, her testimony is not credible. Although the claimant testified that her doctor told her not to return to work, she later testified that the doctor gave her a note to return to work on July 8, 2022, prior to the days in question. In addition, the supervisor testified that she does not have the authority to give time off or remove the claimant from the schedule. Although the employer's policy indicates that the claimant will be considered as having resigned, the claimant's actions led the employer to end her employment. We, therefore, conclude that her actions rise to the level of misconduct.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such

employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective July 11, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER